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| 10/777,731      | 02/12/2004  | Shaibal Roy          | ID-495 (80227)      | 5602             |

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| EXAMINER |
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KEEFER, MICHAEL E

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| ART UNIT | PAPER NUMBER |
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2154

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09/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                               |                            |  |
|------------------------------|-------------------------------|----------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/777,731 | Applicant(s)<br>ROY ET AL. |  |
|                              | Examiner<br>Michael E. Keefer | Art Unit<br>2154           |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 1004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :10/13/2005, 7/5/2005, 6/20/2005, 3/18/2005, 8/20/2004, 02/12/2004.

### DETAILED ACTION

1. This Office Action is responsive to the Application filed 2/12/2004.

#### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 3, 13, 19, 25, and 29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 10, 15, 20, and 25 of copending Application No. 10/777959. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims cited in the instant application are anticipated by the claims in 10/777959.

The only difference between the claims in the instant application and the claims in application 10/777959 is that the claims of the instant application require at least one data store to use multiple operating protocols, whereas the claims in 10/777959 merely require the data stores to use at least one protocol. The

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identified claims of 10/777959 anticipate having more than one protocol supported by the data storage devices.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding **claim 1**, the use of the word "each" in line 8 is indefinite, because it is unclear whether "each" refers to data storage devices or wireless communication devices.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 12, 18, 24, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Poor et al. (US 2002/0183080), hereafter Poor.

Regarding **claims 1, 12, 18, 24 and 28**, Poor discloses:

A communications system comprising:

a plurality of data storage devices, each using at least one of a plurality of operating protocols, at least one data storage device operating using multiple operating protocols; (Fig. 1 servers 30 and 28, the storage devices use multiple operating protocols, not limited to tcp/ip, the internal operating protocol of the server itself (i.e. the operating system), in addition [0026] indicates that a server configuration file may contain multiple protocols)

a plurality of mobile wireless communications devices for accessing said at least one data storage device and each using at least one of the plurality of operating protocols; and (Fig. 1, wireless devices 10)

a protocol interface device comprising (Fig. 1 server 12)

a front-end proxy module for communicating with said plurality of mobile wireless communications devices using respective operating protocols, and (Fig. 1, server 12 receives information from wireless devices 10, therefore communication devices using respective operating protocols)

a protocol engine module for communicating with said plurality of data storage devices using respective operating protocols and selecting a desired operating protocol for communicating with said at least one data storage device from the multiple operating protocols. (Fig. 1, Server 12, [0028] and Fig. 3, intermediate system determines that the email service

uses the pop3 protocol and selects it for use for communication with the server)

Regarding **claims 6-8, 17, 23, 27, and 31**, Poor discloses:

wherein said plurality of data storage devices, said plurality of mobile wireless communications devices, and said protocol interface device process electronic mail (e-mail) messages. ([0028] discloses retrieving email messages from email mailboxes as requested by a mobile device)

Regarding **claims 4, 14, 20, 26, and 30**, Poor discloses:

wherein said protocol interface device further comprises a memory connected to said protocol engine module for storing per-account information associated with each mobile wireless communications device; and wherein said protocol engine module further selects the desired operating protocol based upon the per-account information for a given wireless communications device. ([0027] discloses per-user(device) account information including desired operating protocols.)

Regarding **claims 5, 15-16, and 21-22**, Poor discloses:

wherein said front-end proxy module and said protocol engine module communicate using a common interface protocol able to represent a desired number or all of protocol-supported elements for a desired operating protocol. (There must be a protocol that supports all of the protocol-supported elements for the desired operating protocol in order for the system of Poor to function. In this



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case [0028] discloses that a text protocol is used to signal the intermediate server what functionality is desired from the data servers.)

Regarding **claim 10**, Poor discloses:

A WAN connecting the devices to the protocol device. (Fig. 1, wireless network 14)

Regarding **claim 11**, Poor discloses:

A WAN connecting the storage devices to the protocol devices. (Fig. 1, the internet)

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-3, 13, 19, 25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poor as applied to claims 1, 12, 18, 24, and 28 above, and further in view of Natarajan et al. (US 7194544), hereafter Natarajan.

Poor discloses all the limitations of claims 2-3, 13, 19, 25, and 29 except for choosing the protocol by ranking protocols based off of protocol-supported elements.

The general concept of ranking protocols based off of protocol-supported elements is well known in the art as taught by Natarajan. (Col. 2 lines 9-27 discloses ranking protocols by various criteria, including the relative efficiency of protocols, which involves the elements which a protocol supports.)



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It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Poor with the general concept of ranking protocols based off of protocol-supported elements as taught by Natarajan in order to provide greater interoperability to mobile devices by allowing them to dynamically select a most efficient protocol.

10. Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Poor as applied to claim 1 above, and further in view of Chen (US 6918041).

Poor discloses all the limitations of claim 9 except for generating an error responsive to at least one non-supported operating protocol.

The general concept of generating an error responsive to at least one non-supported operating protocol is well known in the art as taught by Chen. (Col. 8, lines 20-35)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Poor with the general concept of generating an error responsive to at least one non-supported operating protocol as taught by Chen in order to obtain an alert on the occurrence of a fault condition.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael E. Keefer whose telephone number is (571) 270-1591. The examiner can normally be reached on Monday through Friday 5:30am-2pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MEK 8/29/2007